

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KATHERINE SALISBURY,	:	Case No. 1:15cv9799
	:	
Plaintiff,	:	
	:	MOTION TO SET THE STANDARD OF
-against-	:	REVIEW AS ARBITRARY AND
	:	CAPRICIOUS
THE PRUDENTIAL INSURANCE	:	
COMPANY OF AMERICA,	:	
	:	
Defendant.	:	
	X	

**DEFENDANT’S MOTION TO SET THE STANDARD OF REVIEW AS ARBITRARY
AND CAPRICIOUS**

The Prudential Insurance Company of America (“Prudential” or “Defendant”), by and through its attorneys, hereby submits this motion to set the standard of review in this case as arbitrary and capricious. In support of this motion, Prudential states as follows:

1. On December 21, 2015, Plaintiff Katherine Salisbury (“Plaintiff”) filed her Complaint in the Southern District of New York, suing Prudential under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(a)(1), seeking long-term disability (“LTD”) benefits under the terms of the Jefferies Group, Inc. Long Term Disability Coverage Plan (the “Plan”).

2. Plaintiff has since served extensive discovery requests on Prudential: twenty interrogatories, seven requests for production, and five deposition notices. Prudential served its responses and objections to the interrogatories and requests for production via email and Federal Express on Tuesday, July 19, 2016. By these requests, Plaintiff clearly seeks merits and not conflicts discovery.

3. Here, the applicable Plan documents contain a clear grant of discretion to Prudential, the claims administrator. In light of this strong discretionary language in the applicable Plan documents, the arbitrary and capricious standard of review applies.

4. Moreover, because Prudential had discretion to decide Plaintiff's claim, judicial review of its determination is limited to the facts before Prudential at the time it made the decision to terminate Plaintiff's LTD benefits, as found in the administrative record.

WHEREFORE, for the foregoing reasons and reasons provided in Prudential's contemporaneously filed memorandum of law, Prudential respectfully requests that the Court grant Prudential's motion to apply the arbitrary and capricious standard of judicial review.

Dated: August 5, 2016

Respectfully submitted,

By: /s/ Ada W. Dolph

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Certificate of Service

I, Ada W. Dolph, an attorney admitted to practice in the U.S. District Court for the Southern District of New York, do hereby certify that on this 5th day of August, 2016, I caused the electronic submission of the foregoing MOTION TO SET THE STANDARD OF REVIEW AS ARBITRARY AND CAPRICIOUS, to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Michail Z. Hack
Maria Campese
Schwartz Law PC
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Garden City, New York 11530

/s/ Ada W. Dolph
Ada W. Dolph